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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 BSG RESOURCES (GUINEA)  
4 LIMITED, ET AL.,

5 Plaintiffs,

6 v.

17 CV 2726 (OTW)

7 GEORGE SOROS, ET AL.,

8 Defendants.

9 New York, N.Y.  
10 September 9, 2021  
11 11:00 a.m.

12 Before:

13 HON. ONA T. WANG,

Magistrate Judge

14 APPEARANCES

15 REED SMITH LLP  
Attorneys for Plaintiff  
16 BY: LOUIS SOLOMON  
MICHAEL LAZAROFF

17 WILLKIE FARR & GALLAGHER LLP  
Attorneys for Defendants  
18 BY: GABRIELLE K. ANTONELLO  
19 BENJAMIN P. McCULLEN

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(Case called)

MR. SOLOMON: Good morning, your Honor. Louis Solomon, Reed Smith. With me is Mr. Michael Lazaroff for plaintiffs.

THE COURT: Good morning.

MS. ANTONELLO: Good morning, your Honor. Gabriella Antonello, Willkie Farr & Gallagher for defendants.

MR. MCCULLEN: Benjamin McCullen, Willkie Farr & Gallagher on behalf of the defendants.

THE COURT: When you're speaking, please pull the microphone closer to you now that we're all wearing masks again. It's extremely helpful if anyone is speaking to get really close to the microphone so we can all hear, and it will save your lungs.

I have an agenda that is based loosely on the agenda that the parties have submitted.

First question, any report, Mr. Solomon or Mr. Lazaroff, on events going on in Guernsey?

Please, you can sit down if you like so it's easier to speak into the microphone.

MR. SOLOMON: Your Honor, I will apologize in advance for about forgetting about sitting down, but I will try to keep my foresight.

We learned early this morning, in fact, on my way here, that the Guernsey application was heard and granted.

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1 There is apparently an order which we don't have. I'm told by  
2 counsel there that it should be public, and when we get it, we  
3 will supply it to your Honor and to defendants.

4 THE COURT: Can you summarize for me what that means  
5 then. That means that the joint administrator is no longer the  
6 joint administrator or they no longer have to prosecute this  
7 case?

8 MR. SOLOMON: So the joint administrator continues to  
9 be the joint administrator. I think the obligation to continue  
10 has been removed. There are other requirements that the joint  
11 administrator has and will have to follow. As we understand  
12 it, the joint administrator now will continue to assess whether  
13 to proceed with the case, but now is not obliged pursuant to  
14 that paragraph of the order.

15 In terms of timing, I'm not sure exactly what your  
16 Honor asked, but if I may volunteer, the joint administrator  
17 continues to be of the view where we were 30 days ago when we  
18 had suggested a 60-day stay of the case and the adjourning of  
19 rulings and deadlines here and still feels that, within 30 to  
20 45 days, it should have an answer to the question whether and  
21 under what terms and conditions to continue or to withdraw this  
22 lawsuit.

23 In light of that, we were going to suggest that, since  
24 the parties have to be back before your Honor on October 28th,  
25 and a time has been set anyway, we would like there to be a

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1 stay of proceedings or at least a standdown of normal overdoing  
2 it that, I think, has characterized this case in the last 30  
3 days by Mr. Soros, and appear then and be able to answer any  
4 questions. If the matter can be dealt with before then, we  
5 have every interest in doing so.

6 THE COURT: Okay. Thank you. It looks like either  
7 Mr. McCullen or Ms. Antonello might have something to say. So,  
8 go ahead.

9 MR. MCCULLEN: Yes, your Honor. Again, for the  
10 record, Benjamin McCullen, Willkie Farr & Gallagher on behalf  
11 of defendants.

12 Your Honor, I learned this information just outside  
13 this morning, Mr. Solomon reported, as he said, he found out  
14 this morning. So, I'm sort of reacting in realtime here on the  
15 fly.

16 Your Honor, Mr. Solomon is correct that, at different  
17 points in time in the past, they have raised with us the  
18 possibility of a stay of these proceedings. At the time we  
19 said we were willing to consider that and evaluate it, but we  
20 needed to understand the complete facts and circumstances  
21 surrounding the application. We have more clarity as of today,  
22 but we still don't completely know. I know the last time we  
23 were in front of your Honor this was raised, and I think your  
24 Honor at the time had indicated perhaps a disinclination to  
25 stay the action. It's something I haven't had a chance to

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1 speak with my clients with in light of what we heard from  
2 Mr. Solomon today.

3 I will say that, obviously, my clients are in a very  
4 difficult position here, because from our perspective, they're  
5 incurring significant fees. At this point, they're in the case  
6 and they are the only ones who are -- from our perspective, we  
7 feel we are the only ones who are complying with the court  
8 orders at this point in time.

9 I think that, what I would say, your Honor, is 60 days  
10 certainly seems excessive to us. If the plaintiff's position  
11 is that there is going to be a decision, then I think we could  
12 be amenable to something that would reduce the legal spend in  
13 the near term while that assessment is being made. That  
14 timeline that's been proposed that I just heard from  
15 Mr. Solomon seems, to me, to be too long. The joint  
16 administrators have had this case for, I believe, a year now.  
17 There is nothing -- your Honor is aware of everything that's  
18 going on in this case. There are no new facts and  
19 circumstances that are coming to light. If they legitimately  
20 need to make an assessment about the costs and benefits of  
21 proceeding forward with this case, then that may be  
22 appropriate.

23 I think, though, if, under any circumstances, your  
24 Honor, what I would suggest is that we proceed apace with the  
25 pending motion for sanctions. Perhaps we put discovery on hold

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1 so that we don't have to incur additional costs, for instance,  
2 in connection with preparation for Mr. Cramer's deposition.  
3 But the pending sanctions motion, we seek a variety of relief,  
4 including fee shifting, and, frankly, dismissal of the action  
5 on the basis of their noncompliance with the order. I don't  
6 know if your Honor has had a chance to look at that order yet  
7 or not. I think that that motion is an important decision  
8 point for whatever consideration the joint administrators are  
9 doing, whatever cost benefit analysis they are doing. So we  
10 would like to proceed forward with that. We think we're  
11 entitled to that relief. If the plaintiffs would like to put a  
12 short stay on other deadlines while we proceed forward with  
13 that, speaking on the fly, your Honor, having just heard this,  
14 I feel comfortable that that's something we would be able to  
15 do.

16 THE COURT: Okay. Let me start with the sanctions  
17 motion, because defendants have indicated they would like to  
18 keep it going.

19 Unless and until defendants withdraw the sanctions  
20 motion, my understanding is that it can survive even beyond the  
21 withdrawal of this case, if that is what the joint  
22 administrators decide to do with this case. So that I kind of  
23 leave up to the parties. I'm not going to proceed apace with  
24 it because, frankly, I have motions on my six-month list that  
25 were earlier filed that need to be taken care of first.

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1           My understanding is that the plaintiffs have not yet  
2           responded to it; is that right?

3           MR. SOLOMON: Correct, your Honor.

4           THE COURT: What's your response date right now?

5           MR. SOLOMON: Our response date is the 20th of  
6           September, Judge.

7           THE COURT: Okay. If you want to confer with  
8           defendants and discuss an adjournment of that date and agree to  
9           an adjournment of that date or a delay of that date for a  
10          matter of weeks, I would be agreeable to that, but I'll wait  
11          for you to submit a joint letter if you want to change the  
12          date, or if you can't agree to it, you can make a request  
13          separately. I am inclined to probably let that go until we see  
14          what happens with the case as a whole, because the sanctions  
15          motion will still be live, the facts are the facts, and if  
16          defendants withdraw the motion, if the case is dismissed, then  
17          we won't be dealing with it. If they decide to pursue it, we  
18          will, unfortunately, still have to deal with it.

19          The other issue I had was Mr. Cramer's deposition.  
20          Right now, Mr. Cramer has an order by the Court to submit to a  
21          voluntary deposition on either September 23rd or 30th. I  
22          wanted to hear from the parties whether this is something that  
23          you feel can be adjourned or whether we should wait and see in  
24          the near term – I guess September 23rd is two weeks from now –  
25          whether anything changes with the case. Obviously, if the case

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1 goes away, then Mr. Cramer doesn't need to be deposed, but I  
2 hear defense counsel saying they would perhaps like to stem  
3 some of the legal fees and costs, and preparing for the Cramer  
4 deposition would be significant. So I wanted to hear from the  
5 parties on what your thoughts were on the Cramer deposition.  
6 What I would like to not see is this case continuing and  
7 continuing to drag, and Mr. Cramer then is not under any order  
8 to appear for a deposition and we're back where we were a few  
9 months ago.

10 MR. MCCULLEN: From defendant's perspective, your  
11 Honor, I think pursuing discovery and putting our sanctions  
12 motion on hold is the worst of all worlds, because then we have  
13 to do the work, they can take their good old time figuring out  
14 what they want to do with no threat of fee shifting, which is  
15 not only appropriate, it's very warranted here. So, we  
16 obviously want to take guidance from the Court in terms of your  
17 Honor's thinking, in terms of whether a stay makes sense, if  
18 that's something your Honor would be willing to consider.  
19 Then, if so, like I said, our request would be to have the  
20 sanctions motion go forward. I heard what your Honor said on  
21 that, but if the sanctions motion is going to be put on ice  
22 temporarily, which we don't think it should, but if it's going  
23 to be, then the depositions, I believe, as well, should be,  
24 because if we are continuing to do work and incurring fees and  
25 plaintiffs are able to just sit on the sidelines and let us run



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1 around taking discovery with no threat of fee shifting, which  
2 is warranted and appropriate here, that is not an outcome we  
3 would like.

4 So that's why I think, though, your Honor, it's also  
5 important, frankly, to keep a tight leash on this joint  
6 administrator consideration period, however long it's going to  
7 be. I don't think this should be a 60-day stay. I just can't,  
8 for the life of me, even articulate what they need to think  
9 about for 60 days. We can do a couple-week stay if they  
10 legitimately need that stay. Then, at that point -- and this  
11 is why we've requested some other discovery deadlines, which I  
12 think we're going to get to, and my colleague can address, but  
13 we asked for additional documents to be produced, things like  
14 that. They can have a short period of time, think about  
15 whether they are going to pursue this action or not. If  
16 they're not, get it dismissed, but if they are, then let's do  
17 this and let's do it the way discovery happens in the Southern  
18 District of New York, which is they produce the documents that  
19 they've previously acknowledged may contain responsive  
20 materials, then we go to depositions, and we go from there.

21 So I hope I answered your question, your Honor. If I  
22 didn't --

23 THE COURT: Yes, you sure did.

24 MR. SOLOMON: Your Honor, when we were here the last  
25 time before your Honor, we had the pleasure of some summer

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1 interns. I'm sorry this didn't come up then, your Honor will  
2 remember fondly, Judge Martin. Judge Martin used to remind us  
3 when counsel would try to preargue a motion that wasn't fully  
4 briefed, please don't do that, because, frankly, I'm not going  
5 to remember anyway. Right. We're here now because of the  
6 prior patch that Mr.Soros continues to want to throw himself  
7 into --

8 THE COURT: Stop. Stop.

9 MR. SOLOMON: Your Honor --

10 THE COURT: Stop. No, stop. I'm going to stay the  
11 case until October 1st. There will be a joint status letter.  
12 If the case is not over and withdrawn and dismissed by October  
13 1st, there will be a status letter -- you know what, I'm not  
14 going to make you submit a joint status letter. I'm not going  
15 to put you through that. Parties each can write their own  
16 status letter October 1st. If the case is not dismissed before  
17 October 1st, those status letters will have set a new date for  
18 Mr. Cramer's deposition. If the case is not dismissed by  
19 October 1st, then the response to the sanctions motion is due  
20 October 8th.

21 MR. SOLOMON: That's fine, your Honor. There is one  
22 other filing that, with your Honor's permission, will be a page  
23 or less. We would like to respond. Your Honor, I think,  
24 received a letter from Covington on the 7th, I think it was  
25 October 7th, and your Honor had given us until tomorrow to put

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1 in a response --

2 THE COURT: This is on the potential privilege issue  
3 with Cramer?

4 MR. SOLOMON: Correct.

5 THE COURT: That's also stayed. Okay. Mr. Cramer is  
6 not getting deposed in the month of September because the case  
7 is stayed; right? So, that deadline is also stayed.

8 MR. SOLOMON: I'm just concerned that there is  
9 information in that letter that is incorrect and we feel that  
10 we needed to respond to it. It doesn't involve --

11 THE COURT: I'm not preventing you from responding to  
12 it. I'm just saying that all of this becomes moot if  
13 Mr. Cramer doesn't get deposed. If the case is dismissed, it's  
14 moot. If, at that point, you want to write in and correct some  
15 facts or assertions, I'm not going to stop you from filing  
16 something on the docket, but I do not want it to be a response  
17 to the motion because you got the stay you're asking for, and I  
18 do not want it to be anything that's asking for relief from the  
19 Court.

20 MR. SOLOMON: None whatsoever, Judge.

21 THE COURT: Okay. What else do we have that's live,  
22 then, if the case is stayed until October 1st?

23 MR. MCCULLEN: If I can have a second to confer with  
24 my colleague, Judge?

25 THE COURT: Sure.

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1 MR. MCCULLEN: Your Honor, from defendant's  
2 perspective, there are additional issues we raised in the  
3 letter, but our suggestion would be let's see where we are on  
4 the 1st, we'll put it in our status letter. We obviously asked  
5 for some relief and deadlines. If the case isn't dismissed,  
6 then we can present that to your Honor at the beginning of  
7 October and your Honor can consider it at that time.

8 THE COURT: Yes. Okay.

9 MR. SOLOMON: Nothing from the plaintiff. Thank you,  
10 Judge.

11 THE COURT: Thank you very much. We are adjourned.  
12 Please order a copy of the transcript and share the cost.

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